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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 Jahiem Choyce,

7 Plaintiff,

8 v.

9 Shanon Clowers, Steven Altig, Stefany Miley,

10 Defendants.

Case No. 2:23-cv-01657-JAD-DJA

Order

11 Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested
12 authority to proceed *in forma pauperis*. (ECF No. 6). Plaintiff also submitted a complaint. (ECF
13 No. 1-1). Because the Court finds that Plaintiff's application is complete, it grants his application
14 to proceed *in forma pauperis*. The Court also screens Plaintiff's complaint.

15 **I. *In forma pauperis* application.**

16 Plaintiff filed the affidavit required by § 1915(a). (ECF No. 6). Plaintiff has shown an
17 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed
18 *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review
19 Plaintiff's complaint.

20 **II. Screening the complaint.**

21 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
22 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is
23 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks
24 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
25 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend
26 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
27 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
28 F.3d 1103, 1106 (9th Cir. 1995).

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
2 complaint for failure to state a claim upon which relief can be granted. Review under Rule
3 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
4 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
5 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
6 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
7 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
8 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*
9 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
10 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
11 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
12 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the
13 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
14 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
15 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
16 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

17 Federal courts are courts of limited jurisdiction and possess only that power authorized by
18 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
19 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
20 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
21 federal law creates the cause of action or where the vindication of a right under state law
22 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
23 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
24 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
25 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
26 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal
27 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
28 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of

different states.” Generally speaking, diversity jurisdiction exists only where there is “complete diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

A. The Court dismisses Plaintiff’s complaint.

Plaintiff sues: (1) Assistant District Attorney Shanon Clowers; (2) “Contract” Appointed Attorney Steven Altig; and (3) Retired District Judge Stefany Miley.¹ Plaintiff brings his claims under 42 U.S.C. § 1983.² Plaintiff alleges that the three Defendants conspired to violate his civil rights because they falsified documents underlying Plaintiff’s criminal conviction. However, “the U.S. Supreme Court has held that a § 1983 action cannot be used to collaterally attack a criminal conviction unless the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make a determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” *Heck v. Humphrey*, 512 U.S. 477, 484 (1994). Here, Plaintiff’s complaint implies the invalidity of his conviction. However, he has not established that his conviction or sentence has been invalidated on appeal, by habeas petition, or through a similar proceeding. Without facts showing that Plaintiff’s conviction or sentence has been invalidated, Plaintiff’s complaint is barred under *Heck v. Humphrey*. The Court thus dismisses Plaintiff’s complaint without prejudice and with leave to amend.

¹ Plaintiff’s complaint also raises serious questions of immunity, jurisdiction, and merit because of the Defendants he sues. Judges are absolutely immune under § 1983 from damage liability for acts performed in their official capacities. *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). Prosecutors are also absolutely immune under § 1983 for “presenting the State’s case.” *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). Additionally, claims of legal malpractice—for example, against court-appointed defense attorneys—do not come within the jurisdiction of the federal courts on their own; they are state law claims. *See Hackett v. Flier*, No. C 01-0788VRW(PR), 2001 WL 311240, at *1 (N.D. Cal. Mar. 9, 2001). And public defenders acting as attorneys for criminal defendants do not act under color of state law, an essential element of an action under § 1983. *Tower v. Glover*, 467 U.S. 914, 919-20 (1984). However, because the Court finds that Plaintiff’s claims are barred under *Heck v. Humphrey*, it does not reach the issues of immunity, jurisdiction, or the merits of Plaintiff’s claims at this time.

² This provision provides a cause of action for when defendants acting under color of state law deprive a plaintiff of rights secured by the Constitution or federal statutes. *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986).

1 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*
2 *pauperis* (ECF No. 6) is **granted**. Plaintiff will **not** be required to pay an initial installment fee.
3 Nevertheless, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the
4 Prison Litigation Reform Act. The movant herein is permitted to maintain this action to
5 conclusion without the necessity of prepayment of fees or costs or the giving of security therefor.

6 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
7 Prison Litigation Reform Act, the High Desert State Prison will forward payments from the
8 account of **Jahiem Choyce, Inmate No. 1238423**, to the Clerk of the United States District
9 Court, District of Nevada, 20% of the preceding month's deposits (in months that the account
10 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of Court is
11 kindly directed to send a copy of this order to the Finance Division of the Clerk's Office. The
12 Clerk of Court is also kindly directed to send a copy of this order to the attention of **Chief of**
13 **Inmate Services for the Nevada Department of Corrections** at P.O. Box 7011, Carson City,
14 NV 89702.

15 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
16 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the
17 Prison Litigation Reform Act.

18 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's
19 complaint (ECF No. 1-1) on the docket but shall not issue summons.

20 **IT IS FURTHER ORDERED** that Plaintiff's complaint is dismissed without prejudice
21 and with leave to amend.

22 **IT IS FURTHER ORDERED** that Plaintiff shall have until **January 19, 2024** to file an
23 amended complaint to the extent he believes he can correct the noted deficiencies. If Plaintiff
24 chooses to amend the complaint, Plaintiff is informed that the Court cannot refer to a prior
25 pleading (i.e., the original complaint) to make the amended complaint complete. This is because,
26 generally, an amended complaint supersedes the original complaint. Local Rule 15-1(a) requires
27 that an amended complaint be complete without reference to any prior pleading. Once a plaintiff
28 files an amended complaint, the original complaint no longer serves any function in the case.

1 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
2 of each Defendant must be sufficiently alleged.

3
4 DATED: December 20, 2023

A handwritten signature in blue ink, appearing to read 'D. Albregts', is written over a horizontal line.

DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE